

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

INTERNATIONAL UNION OF ELECTRONIC,)	
ELECTRICAL, SALARIED, MACHINE AND)	
FURNITURE WORKERS,)	
)	
Petitioner,)	
)	
PARKWAY SCHOOL DISTRICT,)	Public Case No. R 96-004
)	(Cross Reference 80-041)
Respondent,)	
)	
and)	
)	
TEAMSTERS, LOCAL 610,)	
)	
Incumbent.)	

JURISDICTIONAL STATEMENT

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525, RSMo 1994. This matter arises from the petition of the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers (hereinafter IUE) to represent certain employees of the Parkway School District. IUE's original petition sought to represent a unit of all maintenance, custodial and warehouse employees including lead persons and clerical employees in those areas employed by the Parkway School District. IUE subsequently amended the petition by deleting the classification of clerical employees from the unit sought. A preliminary conference was held September 26, 1995. Thereafter, by notice issued October 6, 1995, the matter was set for hearing on October 30, 1995. Teamsters, Local 610 (hereinafter Teamsters) was given notice of this hearing on the grounds that it was certified by the State Board of Mediation in 1981 as the exclusive bargaining representative for some of the same classifications of employees that are in

the unit IUE wishes to represent. The hearing was conducted as scheduled on October 30, 1995 in Chesterfield, Missouri. Representatives of IUE and the District were present and presented evidence at the hearing, but representatives of the Teamsters did not appear at the hearing or otherwise participate in the proceeding. The case was heard by State Board of Mediation Chairman Francis Brady, employer member Lois Vander Waerdt and employee member LeRoy Kraemer. Following the hearing the IUE and the District filed briefs; the Teamsters did not file a brief. After a careful review of the evidence, the Board sets forth the following Findings of Fact, Conclusions of Law and Direction of Election.

FINDINGS OF FACT

The Parkway School District operates a public school system in St. Louis County, Missouri. The District serves about 23,000 students. The District has about 2,500 employees, 1400 of which are teachers and 1,100 of which are support staff. The District currently meets and confers with employees in three bargaining units: teachers, secretaries, and nurses. All three bargaining representatives are affiliates of the National Education Association.

In 1981, the Board conducted a representation election among employees in the following unit: "all maintenance department and grounds department personnel, but excluding supervisors of the Parkway School District". The result of that election was that said employees selected Teamsters, Local 610 as their exclusive bargaining representative. On September 9, 1981, the Board certified Teamsters, Local 610 as the exclusive bargaining representative for the District's maintenance and grounds employees in Parkway School District, Case No. 80-041 (SBM 1981).

Following that election, the District deducted union dues from the wages of union members. Additionally, the District and the Teamsters negotiated for an initial labor

agreement for two years, but no agreement was ever reached. Thus, the District and the Teamsters never finalized or signed an initial labor agreement. In February, 1984, the Teamsters requested in writing that the District cease deducting union dues on behalf of its members. The District complied with this request. According to the District's records, this was the last correspondence the District received from Teamsters, Local 610 on any subject matter. The District has not dealt with that union since 1984. The District does not currently have a labor agreement or a memorandum of understanding with Teamsters, Local 610, nor has it ever had one with that union. There has never been an election to decertify Teamsters, Local 610 as the exclusive bargaining representative of the District's maintenance and grounds employees. Following the filing of the instant election petition by IUE, the Board contacted Teamsters, Local 610 and inquired whether it had relinquished the unit for which it was certified in 1981. In response to that inquiry, Teamsters, Local 610 advised the Board that they did not relinquish their representation of that unit.

The District operates four high schools and one alternative high school, five middle schools and 18 elementary schools. These building are cleaned by the District's custodial staff. There are a total of 12 to 15 custodians at each high school (except the alternative high school), a total of six custodians at each middle school, and a total of three or four custodians at each elementary school.

The record indicates that building principals used to supervise the custodians in their building. This changed several years ago. Now, custodians are not supervised by the building principal, but instead by the Facilities Division which is headed by Daniel Isom. As a result of this change in the District's organizational structure, principals are not empowered to discipline the custodians who work in their building. If a principal wants to discipline a custodian, the principal has to go through Isom's office to do so.

Custodians in the District are categorized as either regular, master, or head custodians. There are 127 regular custodians, 10 master custodians, and 31 head custodians. The regular and master custodians are at the bottom of the District's organizational structure. They report to the head custodians. The head custodians report, in turn, to the Custodial Operations Supervisors. The Custodial Operations Supervisors report, in turn, to the Director of Facilities. These positions will now be reviewed in inverse order.

The person in charge of the District's custodial operations is Daniel Isom, the Director of Facilities. In addition to overseeing the District's custodial operations, Isom also oversees grounds operations, maintenance operations, construction, and renovation.

With respect to the custodial operations, immediately subordinate to Isom are three Custodial Operations Supervisors: Douglas Stevens, Melva Krechel and Linda Stoney. As their title implies, the three Custodial Operations Supervisors oversee the custodial operations at the District's 31 buildings. They do not do any hands on custodial work. Instead, they coordinate and standardize custodial procedures, purchase supplies and allocate them among schools, participate in budget development, supervise custodial training and special projects and implement the District's recycling and asbestos management program. At the time of the hearing, one Operations Supervisor was also in charge of special projects. In addition to those duties, the three Operations Supervisors also supervise the 31 head custodians. The Operations Supervisors have their offices at the District's facilities building which is separate from the various schools to which those 31 head custodians are assigned. The Operations Supervisors' contacts with the head custodians consists largely of on-the-job visits. The Operations Supervisors visit each school, on average, two or three times per week. They visit so-called "problem buildings" more frequently than that. Operations

Supervisor Douglas Stevens communicates with one of the high school head custodians on a daily basis.

The head custodians are further categorized as head custodians I, II or III. There are four head custodian I's, five head custodian II's, and 22 head custodian III's. Each of the I's work at a high school building and each of the II's work at a middle school building. The III's work in the following areas: 18 work at elementary school buildings (one to each building), one normally is in charge of special projects and the special projects crew of 10 custodians who are known as master custodians, one works at the Early Childhood Center, one works at the Instructional Services Center and one works at the District's facilities building. At the time of the hearing an Operations Supervisor was in charge of special projects, not a head custodian III, because the previous head custodian III in charge of special projects had recently been promoted to Operations Supervisor. The District does not require that a head custodian first work as regular custodian.

The head custodians are in charge of the custodial work done at their school and the custodians who perform it. The head custodian I's oversee the 11 to 14 regular custodians who work at each high school. The head custodian II's oversee the 5 regular custodians who work at each middle school. The head custodian III's at the elementary schools oversee the 2 or 3 regular custodians who work at each elementary school.

Custodians generally work either a morning shift (from 6:00 AM until 2:30 PM) or an afternoon shift (from 2:30 PM until 11:00 PM or from 3:00 PM until 11:30 PM). Head custodians usually work the afternoon shift, although a small number of head custodian III's work the morning shift. Since the head custodians usually work the afternoon shift, the regular custodians who work the morning shift work without a head custodian being present in their building.

Head custodians assign work to the regular custodians. In doing so, they try to equalize the work assignments which they make. They do this by assigning work areas based on square footage (i.e. about 20,000 to 22,000 square feet to each custodian), the regular custodian's ability and the needs of the building. After the work areas are determined and assigned, a color-coded matrix of the building is made and posted. This matrix identifies each regular custodian's assigned work area. The head custodian makes these work assignments without any input from the Custodial Operations Supervisors. If a head custodian feels a work assignment needs to be changed, they can change the existing work assignment. Disputes among custodians over workload distribution are handled by the Custodial Operations Supervisors.

At the start of each day, the regular custodians report to their assigned building and start performing their preassigned custodial duties; they do not wait for the head custodian to assign them work. The regular custodians are aware of the tasks they need to perform because of the color coded duty matrix which is posted at their facility. Head custodians do not meet with the regular custodians assigned to their building on a regular basis and there is no requirement that they do so.

The regular custodians perform a variety of housekeeping tasks. Specifically they clean and dust all surfaces, sweep carpets, wash chalk boards, clean restrooms and remove trash and debris. The head custodians perform these same tasks as well. Thus, the head custodians mop, sweep and clean just like the regular custodians do. Unlike the regular custodians though, the head custodian I's do not have any preassigned work areas. The head custodian II's and III's do have some preassigned custodial work areas. The amount of time which the head custodians spend doing the same duties as the regular custodians varies from individual to individual. The head custodian I's and the head custodian III for special projects spend about 20% of their work time doing these housekeeping duties and the remainder of their work time doing

other tasks. (Note: the other tasks will be identified later). The head custodian II's spend about half of their work time doing these housekeeping duties and the remainder of their work time doing other tasks. The head custodian III's spend about 80% of their work time doing these housekeeping duties and the remainder of their work time doing other tasks.

In addition to doing the same mopping, sweeping and cleaning tasks as the regular custodians, the head custodians perform the following tasks which are not performed by the regular custodians: 1) as previously noted, they assign work to the regular custodians; 2) they check on the cleaning done by the regular custodians to ensure it is done properly and make corrections if needed; 3) they check the daily time cards and report absences and tardies; 4) they train new employees and instruct custodians on proper cleaning methods; 5) they check equipment daily to ensure it is in working order; 6) they ensure there is adequate custodial coverage in their building for school activities and public functions; 7) they attend monthly head custodian meetings which are run by the Operations Supervisors; 8) they monitor the distribution of custodial supplies; 9) they ensure the regular custodians wear the proper uniform; 10) they communicate building concerns to the Operations Supervisors; and 11) they maintain proper building temperatures. Additionally, the head custodians at the high schools inspect the swimming pool areas. Other duties performed exclusively by the head custodians will be addressed next.

Each head custodian meets at least once daily with the principal or assistant principal of their particular school. In these meetings the principal or assistant principal tells the head custodian of activities occurring at the school such as PTO meetings or athletic events which require custodial work. In these meetings the principal or assistant principal also confers with the head custodian about building cleanliness. On some occasions the principal or assistant principal communicates with the head custodian

about the building's needs or cleanliness by leaving notes for the head custodian. The head custodian then relays these instructions or complaints from the principal or assistant principal to the regular custodians concerning custodial duties that need to be performed. They usually do this by telling a regular custodian directly or leaving a note for them that a particular task needs to be done.

The head custodians authorize the regular custodians to work overtime when an outside group pays for the custodial time. In some schools the head custodian picks who works the overtime. In those schools the head custodian can offer the overtime to whoever they wish, including themselves. In other schools overtime work is rotated among the custodians. If an emergency arises at their building outside the regular custodial work hours, the head custodians can call in their regular custodial crew for emergency overtime. Similarly, if an emergency occurred at their building during regular custodial hours, the head custodian could require their regular custodial crew to stay over past the end of the shift to deal with the emergency. Some head custodians get advance approval from Isom or an Operations Supervisor before assigning overtime; others do not.

When the regular custodians are absent from work, some contact their head custodian while others contact the Facilities office. When the regular custodians want to take bereavement leave or make a court appearance, they clear it with the Facilities office; not their head custodian.

When the regular custodians want to take vacation, they complete a leave form. This completed leave form is usually submitted to their head custodian who makes an initial decision to approve or deny the request. The leave form is then submitted to an Operations Supervisor who reviews it. The Operations Supervisors can overrule the head custodian's decision on vacation requests and have done so. Usually though the Operations Supervisors approve the head custodian's decision on vacation requests.

On occasion, regular custodians submit vacation requests directly to an Operations Supervisor or Isom and bypass their head custodian.

The head custodians do not have the authority to hire or transfer anyone or lay anyone off, nor have they effectively recommended any of those actions. With regard to hiring, the record indicates that the hiring of regular custodians is the responsibility of the District's Human Resources Department. Insofar as the record shows, no head custodian has ever had any input into hiring decisions. With regard to transfers, any transfer to another school would be handled by the Human Resources Department or the Facilities Department; not a head custodian. With regard to lay offs, the record does not contain any instances where a head custodian laid off a regular custodian.

With regard to promotions, head custodians cannot promote on their own volition. Some head custodians have recommended regular custodians for promotion though. In some instances those recommendations have been followed; in other instances they have not. Isom makes the final decision concerning promotions.

The head custodians complete annual performance appraisals (i.e. evaluations) on the regular custodians they work with. The evaluation process works as follows. The Custodial Operations Supervisors visit with the head custodians and review a pre-printed evaluation form with them. The first part of this form lists 11 specific custodial job duties. As an example, the first skill listed is "mop, sweep, and scrub floors and other surfaces." The evaluator ranks the employee's performance in these 11 areas using a scale which ranges from "Exceptional" to "Unsatisfactory". The evaluator checks whatever ranking they think is appropriate. The second part of the evaluation form lists the following categories: Job knowledge; reasoning and judgment; resourcefulness; responsibilities; initiative; quality of performance; productivity; human relations; self control; and attitude. The evaluator ranks the employee's performance in these areas using the same scale of "Exceptional " to "Unsatisfactory." The evaluator

again checks whatever ranking they think is appropriate. The ratings that employee's receive in the aforementioned areas are then tallied into a final ranking that again runs from "Exceptional" to "Unsatisfactory". The head custodians are not told how to rank employees or how many "Exceptional" or "Unsatisfactory" ratings to give. The head custodians then evaluate the regular custodians using these forms. Afterwards, the head custodian meets with the regular custodian to go over the completed evaluation. Sometimes, an Operation Supervisor participates in these meetings. The building principals do not have to sign the completed evaluations, but the record indicates that some do. These completed evaluation forms are then submitted to the Operation Supervisors who review them. The evaluations are then submitted to the Human Resources Department where they are reviewed again. According to Larry Turner, the District's Director of Human Resources, these evaluations are used by the Human Resources Department to vary the salary increases which custodians receive up or down from the District's "authorized guidelines". However, the record does not contain any examples which illustrate same. The head custodians are not asked whether the regular custodians should get a pay increase and if so, how much.

With regard to discipline, head custodians are not empowered to discharge or suspend employees on their own volition and have not done so. This responsibility rests with the Operations Supervisors and Isom. Head custodians are empowered though to issue verbal and written warnings and have done so. The verbal warnings usually consist of pointing out mistakes and admonishing employees to improve their work performance. The head custodians do not have to check with anyone before giving a verbal warning. The record indicates that head custodians have issued written warnings on several occasions. If a written warning does not change the custodian's conduct or performance, the head custodian documents it and relays this information to an Operations Supervisor. Some head custodians have recommended suspensions.

When discipline above a written warning is issued, the severity of that discipline is determined and imposed by Isom: not a head custodian. In these situations the head custodian submits a report to Isom, who then conducts his own investigation into the matter. Isom signs off on all discipline above a verbal warning.

With regard to wages, pay increases are determined by the Human Resources Department. Custodians do not all get the same salary increase but rather receive varying amounts. Regular custodians are hourly employees and are paid according to a salary schedule. This schedule does not include steps, but does include a pay range. At present, the hourly rate of pay for regular custodians ranges from \$6.78 to \$11.57. Master custodians who work on the special projects crew are paid under the same salary schedule as the regular custodians. They receive a flat amount of \$.70 over and above their custodial base pay. Head custodians are also hourly employees and are also paid under the same salary schedule as the regular custodians. Like the master custodians, the head custodians also receive a flat amount over and above their custodial base pay. Head custodian I's receive \$1.30 over their base pay, head custodian II's receive \$1.15 over their base pay, and head custodian III's receive \$.90 over their base pay. The head custodian III for special projects receives \$1.60 over his base pay, of which \$.70 is for being a master custodian and \$.90 is for being a head custodian.

CONCLUSIONS OF LAW

There are two issues to be decided herein: (1) do the factual circumstances present here bar IUE's election petition from being processed further, and (2) whether the 31 head custodians at the District's elementary, middle and high schools are supervisory employees. Each of these issues is addressed below.

DISCUSSION CONCERNING ISSUE 1

IUE's original and amended election petitions did not list any other labor organization as having an interest in the District's maintenance, custodial and warehouse employees it sought to represent. In the course of processing the petitions though, it was discovered that another labor organization, namely Teamsters, Local 610, did have an interest in some of those employees, namely the District's maintenance and grounds employees. As a practical matter, this complicates things.

We begin our discussion with a review of the following factual circumstances present here. The record indicates that in 1981, the Board conducted a representation election among the District's maintenance and grounds employees. Teamsters, Local 610 won that election and was subsequently certified by the Board as the exclusive bargaining representative for the District's maintenance and grounds employees. Following the election, the parties engaged in negotiations but never reached an initial agreement. The last written correspondence the District received from the Teamsters was in 1984 when the union requested that the District cease deducting union dues on behalf of its members. In the 11 years which followed, the District had no contact with the Teamsters. The District does not currently have a labor agreement with that union.

Given the foregoing factual circumstances, the threshold question is whether the Teamsters are still the bargaining representative of the District's maintenance and grounds employees. We find that they are. The basis for our finding is simple -- the Teamsters were certified in 1981 as bargaining representative for the District's maintenance and grounds employees and, as of the date of the hearing, their certification had not been revoked. Once a union is certified as a bargaining representative, it keeps that status until it is either (1) decertified, or (2) loses an election to another union, or (3) expressly relinquishes the unit. Here, there is no question that neither (1) nor (2) has occurred because the Teamsters have never been decertified as

bargaining representative nor have they lost an election in the unit to another union. The real question is whether (3) has occurred. It certainly could be inferred from the record evidence that the Teamsters have by their actions disclaimed an interest in representing the District's maintenance and grounds employees. Said another way, it could be inferred that the Teamsters abandoned its representation of those employees long ago. However, that inference simply cannot be made here for the following reason. In an effort to resolve the question of whether the Teamsters disclaimed interest in said employees, the Board contacted the Teamsters prior to the hearing and inquired whether they had relinquished the unit. The Teamsters responded that they did not relinquish their representation of that unit. This response means that notwithstanding their lack of representational interest in the maintenance and grounds employees for the last 11 years, they have not officially disclaimed interest in continuing to represent said employees. Thus, item (3) has not occurred either. Since the Teamsters have not been decertified, lost an election in the unit to another union or expressly relinquished the unit, it follows that they still have their status as the certified bargaining representative for the District's maintenance and grounds employees.

Having so held, the next question is whether there are procedural bars which prevent the Board from processing IUE's election petition further. We find that no procedural bars exist. First, since the Teamsters do not currently have a contract with the District, the contract bar principle has no application here. Second, IUE's contention that the Teamsters have not complied with the Board's requirements for intervention is misplaced. Our previous finding that the Teamsters still retain their status as the certified bargaining representative for the District's maintenance and grounds employees means that they are not an "intervenor" herein; instead, they are the incumbent union. That being so, the Teamsters do not have to comply in this case with

the Board's requirements for intervention in an election proceeding (i.e. a showing of interest).

Given the foregoing finding, the next question concerns how this matter will proceed. The Board has decided to proceed as follows. First, the Board agrees with the District that before an election can be held in a new unit of maintenance, custodial and warehouse employees (which the District does not challenge), there must first be an election in the old maintenance and grounds unit. An election is necessary therein because IUE's petition includes some of those employees. Accordingly, we are ordering an election to be held in the old maintenance and grounds unit. The only employees eligible to vote in this first election are the maintenance and grounds employees (not the custodial and warehouse employees). While we are not officially characterizing this election as a decertification election, it may ultimately serve that function. We have further decided that both the Teamsters and IUE will appear on this ballot. Regardless of the outcome in that election, a second election will then be held among the custodial and warehouse employees. The only employees eligible to vote in this election are the custodial and warehouse employees. The question of whether the head custodians are included or excluded from this employee grouping will be addressed in the next section. The only union which will appear on the ballot for this second election is IUE. Finally, it is noted that at the hearing the parties agreed on certain inclusions and exclusions. Those inclusions and exclusions are expressly incorporated by reference into this decision. Following these elections, the Board will issue two certification notices. In the event that IUE wins both elections, the IUE and the District can keep the two units separate or combine them into a single unit of maintenance (and grounds), custodial, and warehouse employees. In the event the parties decide to combine the two units into one, it will not be necessary for the Board to conduct another representation election. Instead, the parties should notify the Board of their desire and the Board will honor

same. The Board will issue the appropriate certification to modify the official record. Otherwise, our records will continue to reflect two separate bargaining units.

In ordering two separate elections, we are well aware that neither the District nor IUE asked for this result. In our view though, it is necessary under the circumstances to do so. In the event that just the maintenance and grounds employees select a bargaining representative, we find that that employee grouping (i.e. maintenance and grounds employees) constitutes an appropriate bargaining unit under the Missouri Public Sector Labor Law. Conversely, if just the custodial and warehouse employees select a bargaining representative, we find that that employee grouping (i.e. custodial and warehouse employees) also constitutes an appropriate bargaining unit within the meaning of the Missouri Public Sector Labor Law. Finally, in the event that IUE wins both elections and the parties decide on their own to combine the two units into a single unit of maintenance (and grounds), custodial and warehouse employees, we find that that employee grouping (i.e. maintenance [and grounds], custodial and warehouse employees) also constitutes an appropriate bargaining unit within the meaning of the Missouri Public Sector Labor Law.

DISCUSSION CONCERNING ISSUE 2 (SUPERVISORY STATUS)

The second issue to be resolved is whether the 31 head custodians are supervisory employees. The District contends that they are while IUE disputes that assertion.

Although supervisors are not specifically excluded from the coverage of the Missouri Public Sector Labor Law, case law from this Board and the courts have carved out such an exclusion. See Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d (Mo.App. 1977) and St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Missouri, Case No. 76-013 (SBM 1976). This exclusion means that supervisors cannot be included in the same bargaining unit as the employees they

supervise. Since a dispute exists here as to whether the head custodians “supervise” the regular custodians, it is necessary for us to determine if such is, in fact, the case.

This Board has traditionally used the following indicia to determine supervisory status:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters;
- (3) The number of employees supervised and the number of other persons exercising greater, similar and lesser authority over the same employees;
- (4) The level of pay, including an evaluation of whether the person is paid for his or her skills or for his or her supervision of employees;
- (5) Whether the person is primarily supervising an activity or primarily supervising employees; and
- (6) Whether the person is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employees.¹

We will apply those factors here as well. Not all of the above factors need to be present for a position to be found supervisory. In each case the inquiry is whether these factors are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.²

Applying these criteria to the 31 head custodians at issue here, we conclude they do not meet this supervisory test. Our analysis follows.

¹ See, for example, City of Sikeston, Case No. R 87-012 (SBM 1987).

² See, for example, Monroe County Nursing Home District, d/b/a Monroe Manor, Case No. R 91-016 (SBM 1991).

FACTOR 1:

It is undisputed that the head custodians cannot hire, fire, or transfer anyone or lay anyone off. All those tasks are handled by Isom and the Human Resources Department; not the head custodians.

That said, the head custodians exercise some responsibilities in three of the areas listed or inferred in factor (1), namely disciplining, promoting and evaluating employees. An analysis of their role in those areas follows.

- a. As just noted, head custodians cannot discharge employees. Similarly, they cannot suspend them either. They can issue verbal and written warnings though. The head custodians issue verbal warnings without clearing it in advance with Isom or an Operations Supervisor. However, Isom signs off on any discipline above that level. This means that Isom has the final decision on discipline above a verbal warning; not the head custodians.
- b. Head custodians cannot promote anyone on their own volition. That said, some have recommended regular custodians for promotion. When this happened (and head custodians recommended someone for promotion) it is unclear from the record whether their recommendations were solicited by management or not. In either event, their recommendations have been followed on occasion and rejected on occasion. The foregoing demonstrates that head custodians may be consulted by management on promotions. However, they are not an indispensable party in the District's promotion decisions because their recommendations are sometimes ignored.
- c. The head custodians annually evaluate the regular custodians they work with. In doing so, they complete a pre-printed evaluation form by ranking the employee's performance in a variety of areas using a scale which ranges from "Exceptional" to "Unsatisfactory". The ratings in these areas are then tallied into a final ranking which also runs from "Exceptional" to "Unsatisfactory". These completed evaluations then go up the chain of command for review. They first go to the Operations Supervisors and then go to the Human Resources Department. The District's Director of Human Resources, Larry Turner, testified that these completed evaluations are used by the Human Resources Department to vary the salary increases which the custodians receive up or down from the District's "authorized guidelines". There are no examples of same in the record though. That being the case, it is unclear exactly how the wages

of the regular custodians are affected by the completed evaluations. In any event, it is clear that the head custodians do not determine what the pay increases will be for regular custodians, nor do they award them any money; pay increases are determined and distributed by the Human Resources Department.

FACTOR 2:

There is no question that the head custodians are in charge of the regular custodians at their school and oversee them on a day-to-day basis. In doing so, the head custodians monitor and inspect the work done by the regular custodians and ensure the housekeeping work is performed correctly. The head custodians also assign work and relay work instructions to the regular custodians. By in large though, the regular custodians know their daily work assignments because their duties are preassigned and posted on a matrix in the building. As a result, the regular custodians do not wait for their head custodian to assign them work, meet with them or make decisions about what tasks need to be done. The foregoing persuades us that while the head custodians certainly make decisions concerning the custodial work performed in their building, these decisions involve limited independent judgment and discretion.

FACTOR 3:

The number of regular custodians at each building varies from a low of 2 or 3 at the elementary schools to 11 to 14 at the high schools. The following individuals exercise authority over them. First, there are the head custodians who exercise day-to-day on-site control over the regular custodians. That said, the head custodians are not the only person at each school who exercises on-site control over the regular custodians. We are referring of course to the building principal and/or assistant principal. While the building principal and/or assistant principal

do not officially supervise the regular custodians, as a practical matter they can influence them and the work they perform. The record indicates in this regard that the building principal and/or assistant principal can inject themselves into the custodial evaluation process by signing the evaluation if they want, they can criticize the work performed by regular custodians and see that the problem is changed to their satisfaction, they can ensure that the custodial work they want done is done, and if they think it is warranted they can initiate discipline upon the regular custodians by going through channels (namely Isom's office). Their involvement in the above-noted items persuades us that the building principal and/or assistant principal exercise some on-site control over the regular custodians as well. Additionally, it has previously been noted that the regular custodians are also supervised by several individuals in the Facilities Department who are off-site, namely the Custodial Operations Supervisors and Isom. In our view, these off-site individuals exercise more control over the regular custodians than do the head custodians.

FACTOR 4:

All custodians (i.e. regular, master and head) are paid according to the same salary schedule. The master custodians and the head custodians also receive an add-on to their base pay. The add-on for master custodians is \$.70. The add-on for head custodians ranges from \$.90 (for the III's) to \$1.30 (for the I's). This extra pay compensates them for the additional responsibilities they perform. Given their add-on, each head custodian should theoretically be the highest paid custodian at their school. However, that is not always the case. Due to the way the custodial salary schedule is structured with ranges, a regular custodian can be paid more than their head custodian.

FACTORS 5 & 6:

Some of the regular custodians work the morning shift while their head custodian works the afternoon shift. A natural consequence of this arrangement is that the head custodians do not always monitor the regular custodians in person as they perform their custodial duties. Instead, they review and observe the work of the regular custodians after it has been performed. This leads us to conclude that the head custodians primarily supervise the work performed by the regular custodians as opposed to directly supervising the regular custodians.

What we have just described is the classic example of a leadworker or working supervisor (i.e. someone who supervises a work activity). The largest number of head custodians (i.e. the head custodian III's) spend 80% of their time doing their own custodial duties. This means that these individuals spend the vast majority of their work time performing custodial duties that are similar or identical to those performed by the regular custodians they work with. That said, we are well aware that the percentages of time spent doing custodial duties decrease for the head custodian II's and I's. Numerically though, there are twice as many head custodian III's as there are head custodian II's and I's combined. That being the case, we find that the head custodian III class is dispositive for all head custodians.

We therefore hold that while the head custodians oversee the regular custodians on a day-to-day basis, they do not exercise sufficient supervisory authority in such combination and degree to make them supervisors.

DECISION

To summarize, it is the decision of the State Board of Mediation that (1) the factual circumstances present here do not bar IUE's election petition from being processed further; and (2) that the 31 head custodians at issue here are not supervisory

employees. Because of the unique circumstances present here, we have ordered two elections to be held. In the first election the District's maintenance and grounds employees will vote whether they desire representation by either the Teamsters, IUE, or neither. In the second election the District's custodial and warehouse employees will vote whether they desire representation by IUE.

DIRECTION OF ELECTIONS

Secret ballot elections shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the two aforementioned groups as early as possible, but not later than 45 days from the date below. The exact time and place will be set forth in the notice of elections to be issued subsequently, subject to the Board's rules and regulations. The employees eligible to vote are those who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote in the first election (i.e. the District's maintenance and grounds employees) shall vote whether or not they desire to have Teamsters, Local 610, IUE, or neither as their exclusive bargaining representative. Those eligible to vote in the second election (i.e. the District's custodial and warehouse employees) shall vote whether or not they desire to have IUE as their exclusive bargaining representative.

It is hereby ordered that the District shall submit to the Chairman of the State Board of Mediation, as well as to the applicable unions, within 14 calendar days from the date of this decision, two separate alphabetical lists of names and addresses of employees in

the two aforementioned groups who were employed during the payroll period immediately preceding the date of this decision.

Signed this 21st day of February, 1996.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Francis Brady
Francis Brady, Chairman

/s/ Lois Vander Waerd
Lois Vander Waerd, Employer Member

/s/ LeRoy Kraemer
LeRoy Kraemer, Employee Member